

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**BRIAN RUSSELL LOCKE,  
Petitioner,**

v.

**Case No. 11C0364**

**MICHAEL BAENAN,  
Respondent.**

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**ORDER**

Petitioner Brian Russell Locke brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Ordinarily, a habeas petitioner must pay a statutory filing fee of \$5 to file an application for habeas review in federal court. 28 U.S.C. § 1914(a). The present petitioner, however, has requested leave to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915.<sup>1</sup>

Section 1915 is meant to ensure indigent litigants meaningful access to federal courts. Nietzke v. Williams, 490 U.S. 319, 324 (1989). Under § 1915, an indigent party may commence a federal court action, including a petition for habeas corpus relief, without paying required costs and fees, upon submission of an affidavit asserting inability “to pay

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<sup>1</sup> Pursuant to 28 U.S.C. § 1915(g), petitioner has accrued three “strikes” for filing claims that are frivolous, malicious, or fail to state a claim upon which relief may be granted and thus is not permitted to proceed in forma pauperis in civil actions unless he is in imminent danger of serious physical injury. Locke v. Frank, et al., Case No. 08-1278 at 2 (7th Cir. May 22, 2008). As a result of continuing to file and appeal such matters, the Seventh Circuit has sanctioned him and directed the clerks of all federal courts in this circuit “to return unfiled any papers submitted either directly or indirectly by him or on his behalf.” Id. However, these filing restrictions do not apply to properly filed petitions for habeas corpus under § 2254 such as the current matter. Support Sys. Int'l v. Mack, 45 F.3d 185, 186-187 (7th Cir. 1995); Walker v. O'Brien, 216 F.3d 626, 634 (7th Cir. 2000).

such fees or give security therefor" and stating "the nature of the action, defense or appeal and the affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1).

Petitioner has filed the required affidavit of indigence. Upon review of that affidavit, the court is satisfied that petitioner is unable to pay the \$5 filing fee. He has no monthly income and has outstanding debts far exceeding his ability to pay for them. Further, petitioner has previously indicated that he has exhausted the annual legal loan limit set in Wis. Admin. Code § DOC 309.51(1) and lacks the funds necessary to file materials.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that petitioner's request to proceed in forma pauperis is **GRANTED**. The court will promptly give the petition preliminary consideration pursuant to Rule 4 of the Rules Governing § 2254 Cases, which may result in summary dismissal of some or all of petitioner's claims. If the petition, or any part thereof, survives summary dismissal at the Rule 4 stage, the court will order the respondent to file an answer to the petition and may order further briefing by the parties as necessary.

Dated at Milwaukee, Wisconsin this 18th day of May, 2011.

/s \_\_\_\_\_  
LYNN ADELMAN  
District Judge